

(f) *Release of seized property pending decision.* (1) Upon request in the petition for relief from forfeiture, NOAA may in its discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as NOAA deems sufficient to protect the interests served by the applicable statute. The following, however, will not be released:

(i) Property in which NOAA is not satisfied that the petitioner has a substantial interest;

(ii) Property whose entry into the commerce of the United States is prohibited;

(iii) Live animals, except in the interest of the animals' welfare;

(iv) Proceeds from the sale of seized property sold under § 904.505 (see § 904.507 regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(v) Property whose release appears to NOAA not to be in the best interest of the United States or serve the purposes of the applicable statute.

(2) If NOAA grants the request, the amount paid by the petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a waiver by the petitioner of any claim arising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

§ 904.507 Petition for restoration of proceeds.

(a) The general provisions of § 904.506 on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition to any evidence required under § 904.506, the petition for restoration of proceeds must be supported by satisfactory proof that the petitioner did not know of the seizure

prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds NOAA may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§ 904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 through 1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371 through 3378, or any property is seized in connection with a violation of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 through 1882, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, NOAA will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment must be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with NOAA at the address stated in the bill.

NOAA will promptly review the written objections and within 30 days mail the final decision to the party who filed them. NOAA's decision will constitute final agency action on the matter.

§ 904.509 Abandonment.

(a) The owner of a seized item may abandon it to NOAA by various means, including, but not limited to, expressly waiving any claim to the item, refusing or otherwise avoiding delivery of mail concerning the seizure (as by giving a false name or address), or failing for more than 180 days to make or maintain a claim to the item.

(b) The owner of a seized item waives a claim to it by failing to respond within 120 days of issuance of a Government notice concerning the seizure, or by voluntarily relinquishing any interest in an item by written agreement, or otherwise.

(c) An item will be declared finally abandoned, without recourse, upon a finding of abandonment.

§ 904.510 Disposal of forfeited or abandoned items.

(a) *Delivery to Administrator.* Upon forfeiture of any fish, wildlife, parts or products thereof, or other property to the United States, or the abandonment or waiver of any claim to any such property, it will be delivered to NOAA for storage or disposal according to the provisions of this section.

(b) *Purposes of disposal.* Disposal procedures may be used to alleviate overcrowding of evidence storage facilities, and to avoid the accumulation of seized items where disposal is not otherwise accomplished by court order, as well as to address the needs of governmental agencies and other institutions and organizations for such items for scientific, educational, and public display purposes. In no case will items be used for personal purposes, either by loan recipients or government personnel.

(c) *Disposal of evidence.* Items that are evidence may be disposed of only after authorization by the NOAA Office of General Counsel. Disposal approval usually will not be given until the case involving the evidence is closed, except that perishable items may be authorized for disposal sooner.

(d) *Loans—(1) To institutions.* Items approved for disposal may be loaned to institutions or organizations requesting such items for scientific, educational, or public display purposes. Items will be loaned only after execution of a loan agreement which provides, among other things, that the loaned items will be used only for non-commercial scientific, educational, or public display purposes, and that they will remain the property of the United States government, which may demand their return at any time. Parties requesting the loan of an item must demonstrate the ability to provide adequate care and security for the item. Loans may be made to responsible agencies of foreign governments in accordance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(2) *To individuals.* Items generally will not be loaned to individuals not affiliated with an institution or organization unless it is clear that the items will be used in a noncommercial manner, and for scientific, educational, or public display purposes which are in the public interest.

(3) *Selection of loan recipients.* Recipients of items will be chosen so as to assure a wide distribution of the items throughout the scientific, educational, public display and museum communities. Other branches of NMFS, NOAA, the Department of Commerce, and other governmental agencies will have the right of first refusal of any item offered for disposal. The Administrator may solicit applications, by publication of a notice in the FEDERAL REGISTER, from qualified persons, institutions, and organizations who are interested in obtaining the property being offered. Such notice will contain a statement as to the availability of specific items for which transferees are being sought, and instructions on how and where to make application. Applications will be granted in the following order: Other offices of NMFS, NOAA, and the Department of Commerce; U.S. Fish and Wildlife Service; other Federal agencies; other governmental agencies; scientific, educational, or other public or private institutions; and private individuals.